

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT AND KATHRYN KASEBURG, et al.,)

)

No. 14-cv-00784-JCC

Plaintiffs,)

)

vs.

ANSWER AND COUNTERCLAIM OF
DEFENDANT KING COUNTY

)

PORT OF SEATTLE, a municipal corporation;)
PUGET SOUND ENERGY, INC., a Washington)
for profit corporation and KING COUNTY, a)
home rule charter county,)

)

Defendants.)

COMES NOW defendant King County, by and through its attorneys of record, both to answer plaintiffs' complaint and to counterclaim as set forth below. In answer to plaintiffs' Complaint, Defendant admits, denies, and alleges as set forth below. Each and every allegation contained in plaintiffs' Complaint not expressly admitted in full below is denied. The paragraph numbers in the Answer below correspond to the paragraph numbers in plaintiffs' Complaint:

NATURE OF ACTION

1. Answering paragraph 1 of plaintiffs' Amended Complaint, King County denies that the railroad corridor that runs from milepost 5.0 near Kenndale to milepost 10.6 at

ANSWER AND COUNTERCLAIM OF
DEFENDANT KING COUNTY (14-cv-00784-JCC) - 1

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120/FAX (206) 296-0191

1 Wilburton along the Eastern shore of Lake Washington (“South Rail Corridor”) is “abandoned.”
2 As to the balance of this paragraph, King County is without sufficient information to form a
3 belief as to the truth or falsity of the allegations contained therein, and therefore denies the same.

4 2. Answering paragraph 2 of plaintiff’s Amended Complaint, King County denies
5 that the property interests acquired by the railroad were limited to an easement over the entire
6 South Rail Corridor. As to the balance of this paragraph, King County is without sufficient
7 information to form a belief as to the truth or falsity of the allegations contained therein, and
8 therefore denies the same.

9 3. Answering paragraph 3 of plaintiffs’ Amended Complaint, King County denies
10 each and every allegation in the paragraph.

11 4. Answering paragraph 4 of the Amended Complaint, the paragraph consists of
12 legal assertions that do not require an answer. To the extent that Paragraph 4 contains
13 allegations of fact, King County denies the same.

14
15 **THE PARTIES**

16 5. Answering paragraph 5 of the Amended Complaint, this paragraph is directed at
17 other defendants and no answer is required of King County.

18 6. Answering paragraph 6 of the Amended Complaint, this paragraph is directed at
19 other defendants and no answer is required of King County.

20 7. Answering paragraph 7 of the Amended Complaint, King County admits that it is
21 a home rule charter county and a political subdivision of the State of Washington.

22 8 - 89. Answering paragraphs 8-89 of the Amended Complaint, King County is presently
23 without sufficient information to answer the allegations of fact contained in those paragraphs and
therefore denies the same.

JURISDICTION AND VENUE

90. Answering paragraph 90 of the Amended Complaint, King County admits that jurisdiction to determine the allegations in the complaint lies with this Court under both federal and state law. King County denies all other allegations in this paragraph.

91. Answering paragraph 91 of the Amended Complaint, King County admits that RCW 4.12.010 is the mandatory venue statute applicable to plaintiffs' action, that the portion of the Eastside Rail Corridor (ERC) implicated by plaintiffs' action is located in King County, and that defendant King County is located within the geographic boundaries of King County. To the extent that this paragraph includes any additional allegations of fact, King County denies the same.

FACTS PERTINENT TO ALL CAUSES

92. Answering paragraph 92 of the Amended Complaint, King County admits that in the 19th and 20th centuries, various railroads acquired land and interests in land and constructed railroad lines in the vicinity of Lake Washington. To the extent that this paragraph contains different or additional allegations of fact, King County is presently without sufficient information to answer this paragraph and therefore denies the same.

93. Answering paragraph 93 of the Amended Complaint, King County is presently without sufficient information to answer this paragraph and therefore denies the same.

94. Answering paragraph 94 of the Amended Complaint, King County admits the existence of a reported decision in *Haggart v. United States*, 108 Fed. Cl. 70 (Fed. Cl. 2012) by Judge Lettow, but denies that plaintiffs accurately or fully characterize Judge Lettow's conclusions. King County specifically denies that the referenced opinion accurately characterizes the nature of the Kittinger Deed under Washington law, or the established scope of

1 railroad easements under Washington law. To the extent that this paragraph includes any
2 additional allegations, King County denies the same.

3 95. Answering paragraph 95 of the Amended Complaint, King County admits that the
4 BNSF Railway Company owned and operated a railroad on the east side of Lake Washington for
5 many years and that the line is currently rail banked. To the extent that Paragraph 95 of the
6 Complaint contains other allegations, King County is presently without sufficient information to
7 answer them and therefore denies the same.

8 96 - 101. Answering paragraphs 96 - 101 of the Amended Complaint, these paragraphs
9 recite legal conclusions that do not require an answer. The federal interstate rail transportation
10 statutes at 49 U.S.C. §10101 et. seq., and the National Trails System Act, 16 U.S.C. 1241 et.
11 seq., and its implementing regulations, 49 C.F.R. Part 1152, speak for themselves. To the extent
12 that Paragraphs 96 through 101 contain allegations of fact, King County denies the same.

13 102. Answering paragraph 102 of the Amended Complaint, King County admits that
14 BNSF filed a petition for exemption to abandon a certain line of railroad on August 11, 2008.
15 King County denies that the petition for exemption filed by BNSF on August 11, 2008 relates or
16 related to any segment of railroad located along the shore of Lake Washington and south of
17 Interstate 90. A separate petition for exemption was filed by BNSF on September 8, 2008, that
18 relates or related to the segment of railroad located along the shore of Lake Washington and
19 south of Interstate 90. King County admits that it filed requests to railbank certain segments of
20 railroad on September 18, 2008. To the extent that this paragraph contains other allegations of
21 fact, King County is presently without sufficient information to answer, and therefore denies the
22 same.

1 103. Answering paragraph 103 of the Amended Complaint, King County admits that on
2 October 27, 2008, and November 28, 2008, the STB issued a total of three NITUs for three
3 segments of railroad, two located along the east side of Lake Washington and one located
4 between Woodinville and Redmond, Washington. The NITUs are public records that speak for
5 themselves. King County denies that any of the three railroad segments were “abandoned.” To
6 the extent that this paragraph contains other allegations of fact, King County is presently without
7 sufficient information to answer, and therefore denies the same.

8 104 - 105. Answering paragraphs 104-105 of the Amended Complaint, King County
9 admits that it entered into a Purchase and Sale Agreement with BNSF and the Port of Seattle
10 regarding several segments of railroad, which agreement is dated May 12, 2008. King County
11 admits that it entered into a Donation Agreement with BNSF and the Port of Seattle for other
12 segments of railroad, which agreement is also dated May 12, 2008. The Purchase and Sale
13 Agreement and the Donation Agreement are public records that speak for themselves. To the
14 extent that this paragraph contains other or differing allegations, King County is presently
15 without sufficient information to answer, and therefore denies the same.

16 106. Answering paragraph 106 of the Amended Complaint, King County admits that it
17 entered into a Memorandum of Understanding with the Port of Seattle, Puget Sound Energy
18 (PSE), the Central Puget Sound Regional Transit Authority (Sound Transit), Cascade Water
19 Alliance, and the City of Redmond, which MOU is dated November 5, 2009. The MOU is a
20 public record that speaks for itself. To the extent that this paragraph contains other allegations of
21 fact, King County is presently without sufficient information to answer, and therefore denies the
22 same.

1 107. Answering paragraph 107 of the Amended Complaint, King County admits that
2 BNSF quitclaimed its interests in certain segments of railroad to the Port through deeds executed
3 on December 18, 2009. The deeds from BNSF to the Port of Seattle were recorded as King
4 County Recorder's Office instrument numbers 20091218001535, 20091218001536, and
5 20091218001537. The deeds from BNSF to the Port are public records that speak for
6 themselves. The scope of the rights conveyed from BNSF to the Port of Seattle varies from
7 segment to segment depending on the scope of rights that BNSF held at the time of conveyance
8 to the Port. King County denies that BNSF's interests in the so-called South Rail Line were
9 limited to an easement along all portions of that corridor. To the extent that this paragraph
10 contains other allegations, King County is presently without sufficient information to answer,
11 and therefore denies the same.

12 108. Answering paragraph 108 of the Amended Complaint, King County admits that it
13 entered into a Trail Use Agreement with BNSF dated December 18, 2009. The Trail Use
14 Agreement is a public record that speaks for itself. To the extent that Paragraph 108 contains
15 other allegations, King County is presently without sufficient information to answer, and
16 therefore denies the same.

17 109. Answering paragraph 109 of the Amended Complaint, King County admits that the
18 Port of Seattle acquired a rail corridor from BNSF and that it sold some rights in the corridor to
19 other entities. King County denies the remaining allegations in the paragraph.

20 110. Answering paragraph 110 of the Amended Complaint, King County admits that the
21 Port of Seattle entered into an agreement with Puget Sound Energy, Inc. regarding use of the rail
22 corridor. The agreement is a public record that speaks for itself. To the extent that Paragraph
23

1 100 contains other allegations, King County is presently without sufficient information to
2 answer, and therefore denies the same.

3 111. Answering paragraph 111 of the Amended Complaint, King County admits that the
4 Metropolitan King County Council adopted King County Ordinance No. 17503 on December 11,
5 2012. Ordinance No. 17503 is a public record that speaks for itself. To the extent that this
6 paragraph contains other allegations, King County denies the same.

7 112-113. Answering paragraphs 112-113 of the Amended Complaint, King County
8 admits that it entered into a Real Estate Purchase and Sale Agreement with the Port of Seattle
9 regarding several segments of railroad. Pursuant to this Real Estate Purchase and Sale
10 Agreement, the Port conveyed to the County certain property interests in several segments of
11 railroad by Quit Claim Deed. The scope of the rights conveyed from the Port to King County
12 varies from segment to segment depending on the scope of rights conveyed to the Port from
13 BNSF. Both the Purchase and Sale Agreement and the Quit Claim Deed are public records that
14 speak for themselves. To the extent that paragraphs 112-113 of the Amended Complaint contain
15 other allegations, King County is presently without sufficient information to answer, and
16 therefore denies the same.

17 114. Answering paragraph 114 of the Amended Complaint, King County denies the
18 same.

19
20 **COUNT I—QUIET TITLE**

21 115. Answering paragraph 115, King County hereby incorporates by reference its
22 responses to paragraphs 1-114 of the Amended Complaint as though fully set forth herein.

23 116. Answering paragraph 116, King County admits that the Port acquired a rail corridor
from BNSF as discussed previously in this Answer. King County denies that that the property

1 interests acquired by the Port in the corridor were limited to a hiking and biking trail with the
2 possible reactivation of a railroad. To the extent that this paragraph contains other allegations,
3 King County denies the same.

4 117. Answering paragraph 117 of the Amended Complaint, King County is presently
5 without sufficient information to answer, and therefore denies the same.

6 118. Answering paragraph 118 of the Amended Complaint, King County admits that it
7 acquired certain real property interests in segments of the railroad corridor from the Port of
8 Seattle by Quit Claim Deed as described previously in this Answer. King County denies that
9 that the property interests that it acquired from the Port in the corridor were limited to a hiking
10 and biking trail with the possible reactivation of a railroad. To the extent that this paragraph
11 contains other allegations, King County denies the same.

12 119. Answering paragraph 119 of the Amended Complaint, King County denies that its
13 interests in the rail corridor are limited to a hiking and biking trail with the possible reactivation
14 of a railroad. King County admits that, on occasion, its interests have been described as a “fee,”
15 which accurately characterizes the County’s real-property interests in portions of the corridor.
16 To the extent that this paragraph contains other allegations, King County denies the same.

17 120. Answering paragraph 120 of the Amended Complaint, King County admits that
18 PSE acquired certain real property interests in segments of railroad corridor from the Port of
19 Seattle as previously described in this Answer. To the extent that this paragraph contains other
20 allegations, King County denies the same.

21 121. Answering paragraph 121 of the Amended Complaint, King County denies the
22 same.
23

1 122. Answering paragraph 122 of the Amended Complaint, King County denies the
2 same.

3 123. Answering paragraph 123 of the Amended Complaint, King County denies the
4 same.

5 124. Answering paragraph 124 of the Amended Complaint, King County denies the
6 same.

7 **COUNT II—DECLARATORY JUDGMENT**

8 125. Answering paragraph 125 of the Amended Complaint, King County hereby
9 incorporates by reference its responses to paragraphs 1-124 of the Amended Complaint as
10 though fully set forth herein.

11 126. Answering paragraph 126 of the Amended Complaint, King County denies the
12 same.

13 127. Answering paragraph 127 of the Amended Complaint, King County admits only
14 that the scope of property rights held by BNSF at the time of conveyance to the Port varied along
15 the corridor, and amounted to a fee in some places and an easement in other places. King
16 County denies the balance of this paragraph, including plaintiffs' implicit claim that all plaintiffs
17 possess fee title to real property along the rail corridor.

18 128. Answering paragraph 128 of the Amended Complaint, King County admits that the
19 Port acquired a rail corridor from BNSF as discussed previously in this Answer. King County
20 denies that the property interests acquired by the Port in the corridor were limited to a hiking and
21 biking trail with the possible reactivation of a railroad. To the extent that this paragraph contains
22 other allegations, King County denies the same.
23

1 129. Answering paragraph 129 of the Amended Complaint, King County admits that it
2 acquired certain real property interests in segments of railroad corridor from the Port of Seattle
3 by Quit Claim Deed as described previously in this Answer. King County denies that the
4 property interests that it acquired from the Port in the corridor were limited to a hiking and
5 biking trail with the possible reactivation of a railroad. King County denies that BNSF
6 abandoned the corridor or its property interests on the corridor. To the extent that this paragraph
7 contains other allegations, King County denies the same.

8 130. Answering paragraph 130 of the Amended Complaint, King County denies the
9 same.

10 131. Answering paragraph 131 of the Amended Complaint, this paragraph consists of
11 legal conclusions, to which no answer is required. To the extent an answer is required, King
12 County denies the same.

13 132. Answering paragraph 132 of the Amended Complaint, King County denies the
14 same.

15 **KING COUNTY'S COUNTERCLAIM FOR QUIET TITLE**
16 **AND DECLARATORY JUDGMENT**

17 133. As Counterclaim Plaintiff, King County re-alleges paragraphs 1-132 of this
18 answer as if fully set forth herein.

19 134. The Port of Seattle, through Quit Claim Deed, acquired the entirety of BNSF's
20 property rights to the South Rail Corridor, which runs adjacent to, or near, plaintiffs' individual
21 properties. Subject to certain mesnes grants of easement to PSE and to Sound Transit, by
22 subsequent Quit Claim Deed, the Port passed all of its remaining right, title, and interest in
23 BNSF's property rights in the South Rail Corridor to King County.

1 135. The extent of BNSF's property interest in the South Rail Corridor stem from when
2 and how segments of the railroad corridor were originally assembled in the late 1800s and early
3 1900s. There are at least three original deeds that were used to assemble the segments of the
4 South Rail Corridor that run adjacent to, or near, plaintiffs' individual properties: (1) Deed No.
5 269500 ("Kittinger"), (2) Deed No. 102518 ("Lake Washington Belt Line Co."), and (3) Deed
6 No. 287093 ("Lake Washington Land Co./Loomis"). In addition, other portions of the rail
7 corridor adjacent to, or near, plaintiffs' individual properties were acquired by eminent domain
8 in King County Superior Court Cause No. 40536.

9 136. As successor in interest to BNSF and the Port, King County acquired and holds
10 fee title to those portions of the South Rail Corridor originally acquired under the Deed No.
11 287093 ("Lake Washington Land Co./Loomis"), subject to exceptions of record, including the
12 Port's mesnes grants of easements to PSE and Sound Transit.

13 137. As successor in interest to BNSF and the Port, King County acquired and holds
14 fee title to those portions of the South Rail Corridor originally acquired under Deed No. 269500
15 ("Kittinger"), subject to exceptions of record, including the Port's mesnes grants of easements to
16 PSE and Sound Transit.

17 138. No portion of the South Rail Corridor has been abandoned. The South Rail
18 Corridor is railbanked under a Notice of Interim Trail Use (NITU) issued by the Surface
19 Transportation Board in STB Docket No. AB-6 (Sub-No. 464X) on October 27, 2008.

20 139. Save and except for exceptions of record, including the Port's mesnes grants of
21 easements to PSE and Sound Transit, King County currently owns and holds any and all
22 subsurface, surface and aerial property rights in the South Rail Corridor that were held by BNSF
23

1 when BNSF filed a Petition for Exemption with the STB on September 8, 2008, in STB Docket
2 No. AB-6 (Sub-No. 464X).

3 140. Under RCW 7.28.010 and because King County owns portions of the South Rail
4 Corridor that derive from the Lake Washington Land Co./Loomis and Kittinger deeds in fee
5 simple absolute, title to those portions of the South Rail Corridor should be quieted in King
6 County and not in any plaintiff who claims any property interest in those portions of the South
7 Rail Corridor. In addition, under RCW 7.24, the Court should declare that King County holds a
8 fee simple property interest in those same portions of the South Rail Corridor, subject only to
9 exceptions of record, including the Port's mesnes grants of easements to PSE and Sound Transit..

10 141. Under RCW 7.28.010 and because King County currently owns and holds any
11 and all subsurface, surface and aerial property rights in the South Rail Corridor that were held by
12 BNSF when BNSF filed a Petition for Exemption with the STB on September 8, 2008, in STB
13 Docket No. AB-6 (Sub-No. 464X), title should be quieted in King County and not in any
14 plaintiff who claims any property interest in those portions of the South Rail Corridor contrary to
15 the property interest held by King County. In addition, under RCW 7.24 and with regard to
16 those same portions of the corridor, the Court should declare that King County holds the same
17 property rights that were held by BNSF when BNSF filed a Petition for Exemption with the STB
18 on September 8, 2008, in STB Docket No. AB-6 (Sub-No. 464X).

19 **FURTHER ANSWER AND AFFIRMATIVE DEFENSES**

20 BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSES to plaintiffs'
21 Amended Complaint, and without admitting anything previously denied, King County asserts the
22 following affirmative defenses against each plaintiff:
23

1 1. Plaintiffs, in whole or in part, have failed to state a claim upon which relief may
2 be granted.

3 2. Plaintiffs have failed to join indispensable parties under Fed. R. Civ. P. 19.

4 3. Plaintiffs, in whole or in part, have stated a claim that falls outside the Court's
5 subject matter jurisdiction.

6 4. Plaintiffs, in whole or in part, have stated claims under Washington law that are
7 preempted by federal law.

8 5. Plaintiffs, in whole or in part, have stated claims that are barred by the statute of
9 limitations.

10 6. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
11 laches.

12 7. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
13 waiver.

14 8. Plaintiffs, in whole or in part, have stated claims that fail because plaintiffs
15 acquiesced in the acts about which plaintiffs now complain.

16 9. Plaintiffs, in whole or in part, have failed to exhaust their administrative remedies.

17 10. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
18 estoppel.

19 11. Plaintiffs, in whole or in part, have stated claims that they, or their predecessors in
20 title, have previously released.

21 12. Plaintiffs, in whole or in part, are not real parties in interest.

22 King County reserves the right to amend this Answer and assert additional affirmative
23 defenses.

PRAYER FOR RELIEF

King County, having fully answered plaintiffs' Amended Complaint, counterclaimed and asserted its affirmative defenses, hereby urges the court to grant the following relief:

1. A full dismissal of plaintiffs' Amended Complaint with prejudice;
2. A full grant of King County's Counterclaim by quieting title in King County and declaring the full scope of King County's property interests in the disputed portions of the Southern Rail Corridor;
3. An award of attorney fees and costs to King County in accord with equity or law;
4. An award of prejudgment and post-judgment interest on any judgments granted to King County; and
4. An award of such additional relief as the Court deems equitable and just.

DATED this 20th day of June, 2014 at Seattle, Washington.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: s/ David J. Hackett
DAVID J. HACKETT, WSBA #21236
Senior Deputy Prosecuting Attorney

By: s/ Andrew W. Marcuse
ANDREW W. MARCUSE, WSBA #27552
Senior Deputy Prosecuting Attorney
Attorneys for Defendant King County
500 Fourth Ave., 9th Floor
Seattle, WA. 98104
Phone: (206) 296-8820 / Fax: (206) 296-8819

DECLARATION OF FILING AND SERVICE

I hereby certify that on June 20, 2014, I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

J. Richard Aramburu, WSBA #466
Jeffrey M. Eustis, WSBA #9262
ARAMBURU & EUSTIS, LLP
720 Third Avenue, Suite 2000
Seattle, WA 98104-1860

Timothy G. Leyh, WSBA #14853
Randall Thomsen, WSBA #25310
Kristin Ballinger, WSBA #28253
Calfo, Harrigan, Leyh & Eakes, LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104

Thomas S. Stewart
Elizabeth McCulley
BAKER STERCHI COWDEN & RICE, LLC
2400 Pershing Road, Suite 500
Kansas City, MO 64108

James E. Breitenbucher, WSBA # 27670
Gavin W. Skok, WSBA # 29766
Courtney Seim, WSBA # 35352
Bryan J. Case, WSBA # 41781
Riddell Williams PS
1001 – 4th Avenue, Suite 4500
Seattle, WA 98154-1065

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 20th day of June, 2014 at Seattle, Washington.

s/ Karen Richardson
Karen Richardson, Legal Secretary
King County Prosecuting Attorney's Office